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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/008,415	11/13/2001	Curtis Miller	1554-AB	2984
23595 7590 01/17/2007 NIKOLAI & MERSEREAU, P.A. 900 SECOND AVENUE SOUTH SUITE 820 MINNEAPOLIS, MN 55402			EXAMINER KOHARSKI, CHRISTOPHER	
			ART UNIT 3763	PAPER NUMBER
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		01/17/2007	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/008,415

Applicant(s)

MILLER ET AL.

Examiner

Christopher D. Koharski

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 August 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☒ Claim(s) 16 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 November 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
- ☐ Notice of Informal Patent Application
- ☐ Other: _____.

DETAILED ACTION

Response to Amendment

Examiner acknowledges the petition for revival granted 8/12/2005, of the application that was previously abandoned. Examiner acknowledges receipt of amended claims 1-2, and the addition of new claims 3-19. Currently claims 1-19 are pending for examination in this application.

Response to Arguments

Applicant's arguments with respect to claims 1-19 have been considered but are moot in view of the new ground(s) of rejection (see below) necessitated by Applicant's amendments and additional new claims.

Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the syringes of different varying sizes and volumes must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate

changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Objections

Claim 16 is objected to because of the following informalities: The claim appears to be a duplicate of claim 15, and contains a spelling error. Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4, 6 and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Hood, III (5,887,755). Hood, III discloses a wound sealant preparation and application device and method.

Regarding claims 1-4, 6, and 13, Hood, III discloses an applicator system comprising a plurality of syringes (106,108), an inlet for a compressed gas source (130, 134a) (col 5, ln 40-50), a manifold (100) that holds and connects the plurality of

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syringes, a mixing tip (116), wherein the applicator is arranged such that separate lumens (112, 114) that extend to the end of the manifold that are fluidly connected to each syringe to convey the fluid from the syringes through the manifold to the mixing tip wherein application of the compressed medical gas (130) is capable of providing mixing and release of the syringe fluids through the device (Figure 1).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 5, 7-8 and 14-17 are rejected under 35 U.S.C 103(a) as being unpatentable over Hood, III in view of Sawhney (6,179,862). Hood, III meets the claim limitations as described above except for the lumens extending beyond the manifold and are smaller than the gas directing lumens.

However, Sawhney teaches methods and apparatuses for in situ formation of adhesive/sealing hydrogels.

Regarding claims 5, 7-8 and 14-17, Sawhney teaches lumens (50a-c) that extend beyond the manifold (42) and are smaller than the gas directing lumens (51a-c) (Figures 2A-2D).

At the time of the invention, it would have been obvious to incorporate the tip of Sawhney to the system of Hood, III in order to aid in tip mixing and formulation delivery. The references are analogous in the art and with the instant invention; therefore, a combination is proper. Therefore, one skilled in the art would have combined the teachings in the references in light of the disclosure of Sawhney.

Claim Rejections - 35 USC § 103

Claims 9-12 and 18-19 are rejected under 35 U.S.C 103(a) as being unpatentable over Hood, III in view of Sawhney in further view of Eibl et al. (4,735,616). The modified Hood, III meets the claim limitations as described above except for the differing size syringes and volumes.

However, Eibl et al. teaches an arrangement for applying a tissue adhesive.

Regarding claims 9-12 and 18-19, Eibl et al. teaches an applicator that has varying size syringes (1,2) connected to a manifold (16) for application with a mixing tip (20) (Figure 2).

At the time of the invention, it would have been obvious to incorporate the different size syringes of Eibl et al. to the modified system of Hood, III because it allows for interchangeability in the system and allows for different size formulation elements (see abstract). The references are analogous in the art and with the instant invention;

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therefore, a combination is proper. Therefore, one skilled in the art would have combined the teachings in the references in light of the disclosure of Eibl et al. Additionally, it would have been obvious to one having ordinary skill in the art at the time the invention was made to adjust the size of the syringes, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955).

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher D. Koharski whose telephone number is 571-272-7230. The examiner can normally be reached on 7:30am to 4:00pm EST.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nick Lucchesi can be reached on 571-272-4977. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Date:

1/07/2007


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